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January 31, 2025

By ECF

Vernon S. Broderick, U.S.D.J.
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
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Re: Phillips, et al. v. NBA, et al., Civil. Action No. 22-cv-09666 (VSB)

Dear Judge Broderick:

We represent Defendants National Basketball Association and NBA Services Corp. ("Defendants") and write jointly with counsel for Plaintiffs Mark Ayotte, Kenneth Mauer, and Jason Phillips. More specifically, in advance of the February 19, 2025 telephonic conference and pursuant to Your Honor's January 22, 2025 Order (ECF No. 147), we write to provide the Court with an update on the status of the case and a proposed briefing schedule for summary judgment and *Daubert* motions.

Plaintiffs are two former National Basketball Association referees and a former Vice President, Replay Center Operations Principal, all of whom were terminated after their requests for religious exemptions to Defendants' Covid-19 vaccine mandates were denied. Their Complaint contains three statutory causes of action (brought under Title VII of the Civil Rights Act of 1964, the New York State Executive Law § 296 and the New York City Administrative Code § 8-107) as well as constitutional and Religious Freedom Restoration Act claims based on the state action doctrine.

I. Case Status/Pending Objections to Discovery Motions

Pursuant to the Fourth Amended Case Management Plan and Scheduling Order (ECF No. 138), all fact discovery and expert discovery were complete as of January 30, 2024 and July 15, 2024, respectively, with the exception of three pending objections to Magistrate Judge Lehrburger's discovery rulings filed by Plaintiffs discussed in detail below.

The parties were previously scheduled to appear before Your Honor on July 31, 2024 for a post-discovery conference. On July 23, 2024, Your Honor issued an Order (ECF No. 146) adjourning the post-discovery conference in light of the pending discovery objections.

The following objections to three of Magistrate Judge Lehrburger's discovery rulings remain pending before Your Honor at this time:

1. On November 13, 2023, Magistrate Judge Lehrburger entered an Order granting in part and denying in part Plaintiffs' motion to quash Defendants' deposition subpoena to Carol



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Ayotte, Plaintiff Mark Ayotte's wife (ECF No. 84). More specifically, Magistrate Judge Lehrburger held that a deposition of Ms. Ayotte may go forward, but limited the deposition to 2.5 hours. On November 27, 2023, Plaintiffs filed objections to the November 13, 2023 Order (ECF No. 94). Defendants filed their opposition to Plaintiffs' objections on December 4, 2023 (ECF No. 99), and filed a letter in further support of their opposition on February 1, 2024 (ECF No. 122).

2. On January 12, 2024, Magistrate Judge Lehrburger entered an Order denying Plaintiffs' motion for additional deposition time of two hours each for Defense witnesses Byron Spruell, NBA President of League Operations and Neal Stern, NBA Senior Vice President and Assistant General Counsel (ECF No. 110). On January 18, 2024, Plaintiffs filed objections to the January 12, 2024 Order (ECF No. 112). Defendants filed their opposition to Plaintiffs' objections on February 1, 2024 (ECF No. 119).
3. On February 12, 2024, Magistrate Judge Lehrburger entered an Order denying Plaintiffs' motion for leave to depose David Weiss, NBA Senior Vice President, Player Matters (ECF No. 125). On February 26, 2024, Plaintiffs filed objections to the February 12, 2024 Order (ECF No. 127). Defendants filed their opposition to Plaintiffs' objections on March 11, 2024 (ECF No. 134).

II. Dispositive Motion(s)/Daubert Motions.

Plaintiffs anticipate filing a motion for summary judgment as to several claims asserted in the case.

Defendants anticipate filing a motion for summary judgment as to all causes of actions and claims asserted in the Third Amended Complaint And Jury Demand (ECF No. 36) in their entirety and with prejudice, and request that a briefing schedule be set at the February 19, 2025 status conference.

In addition to their dispositive motions, Plaintiffs and Defendants anticipate filing motions to exclude one or more of the opposing parties' expert witnesses under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Accordingly, the parties request that in addition to a briefing schedule for dispositive motions, a briefing schedule be set for the parties' anticipated *Daubert* motions.

The parties have conferred and are prepared to discuss a briefing schedule with Your Honor at the February 19 conference. For the Court's convenience, attached as Exhibit A is a proposed briefing schedule as to dispositive and *Daubert* motions agreed upon by the parties.

Respectfully submitted,

/s/ Elise M. Bloom

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cc: All Counsel of Record (by ECF)